

TOUCHNET INFORMATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

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RICHARD P. METTKE,

Plaintiff,

vs.

Civil Action No. 98-PT-0596-E

TOUCHNET INFORMATION
SYSTEMS, INC.,

Defendant.

ANSWER

Defendant, TouchNet Information Systems, Inc., pursuant to Fed R. Civ. P. 12 files its Answer, Affirmative Defenses and Counterclaims to Plaintiff's Complaint and states as follows:

The Parties

1. Defendant lacks sufficient knowledge or information to form a belief concerning the averments set forth in paragraph 1 of Plaintiff's Petition, and therefore denies those averments.

2. Defendant admits the averments of paragraph 2 of Plaintiff's Complaint.

Jurisdiction and Venue

3. Defendant admits that this is an action for patent infringement arising under the patent laws. Defendant denies all other averments of paragraph 3 of Plaintiff's Complaint.

4. Admitted that the district courts have original jurisdiction of any civil action arising under an Act of Congress relating to patents.

5. Defendant denies the averments of paragraph 5 of Plaintiff's Complaint.

The Patent

6. Defendant lacks sufficient knowledge or information to form a belief concerning the averments set forth in paragraph 6 of Plaintiff's Petition, and therefore denies those averments.

7. Defendant lacks sufficient knowledge or information to form a belief concerning the averments set forth in paragraph 7 of Plaintiff's Petition, and therefore denies those averments.

8. Defendant lacks sufficient knowledge or information to form a belief concerning the averments set forth in paragraph 8 of Plaintiff's Petition, and therefore denies those averments.

The Infringing Acts

9. Defendant denies the averments of paragraph 9 of Plaintiff's Complaint.
10. Defendant denies the averments of paragraph 10 of Plaintiff's Complaint.
11. Defendant denies the averments of paragraph 11 of Plaintiff's Complaint.
12. Defendant denies the averments of paragraph 12 of Plaintiff's Complaint.

The Background of the Controversy

13. Defendant admits the averments of paragraph 13 of Plaintiff's Complaint.
14. Defendant admits plaintiff contacted the defendant, but denies that any offer of license or other business arrangement was made by plaintiff.
15. Defendant admits the averments of paragraph 15 of Plaintiff's Complaint.
16. Defendant denies the averments of paragraph 16 of Plaintiff's Complaint.

Count I - Patent Infringement

17. Defendant denies the averments of paragraph 17 of Plaintiff's Complaint.
18. Defendant denies the averments of paragraph 18 of Plaintiff's Complaint.
19. Defendant denies the averments of paragraph 19 of Plaintiff's Complaint.
20. Defendant denies the averments of paragraph 20 of Plaintiff's Complaint.
21. Defendant denies the averments of paragraph 21 of Plaintiff's Complaint.
22. Paragraph 20 of Plaintiff's Complaint requires neither admission nor denial by the Defendant.

Affirmative Defenses

1. Defendant has not infringed United States Patent No. 5, 602,905 (" '905 patent").
2. On information and belief, the '905 patent is invalid.
3. On information and belief, the '905 patent is unenforceable.
4. On information and belief, plaintiff was not the first to invent the subject matter of the '905 patent.
5. On information and belief, the '905 patent is invalid as the subject matter claimed by the '905 patent is anticipated by the public activities and uses of the subject matter claimed in the '905 by the defendant long prior to January 23, 1994.
6. On information and belief, the '905 patent is invalid as the subject matter claimed by the '905 patent is obvious in view of the public activities and uses of the subject matter claimed in the '905 by the defendant long prior to January 23, 1994.

Counterclaims

1. Counterclaimant TouchNet Information Systems, Inc., is a Kansas Corporation having its principal place of business in Lenexa, Kansas.
2. Counterclaim defendant Richard Mettke alleges that he is a resident of the Northern District of Alabama.

Jurisdiction and Venue

1. This Court has subject matter jurisdiction over the counterclaims set forth herein pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 1367.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) and (c).

COUNT I

(Declaratory Relief As to the '905 Patent)

1. Counterclaim defendant alleges that he is the inventor and owner of the '905 Patent.
2. Counterclaim defendant has accused TouchNet of infringing the '905 patent.
3. An actual controversy exists between counterclaimant and the counterclaim defendant as to infringement, validity and unenforceability of the '905 patent.
4. Pursuant to 28 U.S.C. § 2201 and 2202 counterclaimant is entitled to a declaratory judgment that the '905 patent is invalid, unenforceable and not infringed by it.
5. Counterclaimant has not infringed the '905 patent.
6. On information and belief, the '905 patent is invalid.
7. On information and belief, the '905 patent is unenforceable.
8. On information and belief, counterclaim defendant was not the first to invent the subject matter of the '905 patent.
9. On information and belief, the '905 patent is invalid as the subject matter claimed by the '905 patent is anticipated by the public activities and uses of the subject matter claimed in the '905 by the counterclaimant long prior to January 23, 1994.

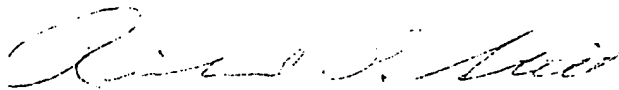
10. On information and belief, the '905 patent is invalid as the subject matter claimed by the '905 patent is obvious in view of the public activities and uses of the subject matter claimed in the '905 by the counterclaimant long prior to January 23, 1994.

WHEREFORE, defendant and counterclaimant requests the Court to enter an order and final judgment that:

- a. Plaintiff, Richard Mettke, take nothing by his Complaint;
- b. The '905 be declared invalid, unenforceable and not infringed by defendant and counterclaimant;
- c. Defendant and counterclaimant, TouchNet, be awarded its attorney's fees and costs; and
- d. Defendant and counterclaimant, TouchNet, be awarded such other and further relief as the Court deems proper.

Respectfully submitted,

SPENCER FANE BRITT & BROWNE, LLP



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ATTORNEYS FOR
TOUCHNET INFORMATION SYSTEMS, INC.

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing Answer was served via U.S. Mail, postage prepaid, this 15th day of April, 1998, upon:

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II. Jurisdiction and Venue

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Defendant has committed acts of patent infringement under 35 U.S.C. § 271 in this judicial district, and elsewhere.

4. This Court has jurisdiction of this action under 28 U.S.C. § 1338(a).

5. Venue is proper in this District under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(b).

III. The Patent

6. United States Letters Patent No. 5,602,905 ("the '905 patent"), or "patent-in-suit" entitled "On-Line Communication Terminal/Apparatus," a copy of which is attached as Exhibit A, was duly and legally issued to Mettke on February 11, 1997.

7. All right, title and interest in and to the patent-in-suit are now owned by Mettke.

8. The invention described and claimed in the patent-in-suit was made in this judicial district by Mettke.

IV. The Infringing Acts

9. On information and belief, Defendant has manufactured, offered for sale, sold, and/or used and continues to manufacture, offer for sale, sell and/or use internet access kiosks embodying the invention claimed in one or more of the claims of the patent-in-suit.

10. On information and belief, some or all of the infringing acts of Defendant related to these internet access kiosks have occurred in this judicial district.

11. These acts constitute infringement of the patent-in-suit under 35 U.S.C. § 271.

12. On information and belief, Defendant had actual knowledge of Mettke's invention and of the patent-in-suit prior to commencing certain of its acts of infringement.

V. Background of the Controversy

13. On February 11, 1997, the '905 patent issued to Mettke.

14. On or about April 12, 1997, after issuance of the patent-in-suit, Mettke wrote to TNIS and offered the invention disclosed and claimed in the patent-in-suit to TNIS in exchange for a license or some other business arrangement.

15. TNIS's attorneys wrote back to Mettke and informed Mettke that they did not believe that TNIS was in violation of Mettke's rights.

16. On information and belief, Defendant, either by itself or through its subsidiaries, affiliates, or agents, did and still does manufacture, offer for sale, sell, and/or use networked multimedia kiosks in the United States that were and are covered by the patent-in-suit.

VI. Count I - Patent Infringement

17. On information and belief, Defendant has infringed and continues to infringe the patent-in-suit within this District, by itself and through others, manufacturing,

offering for sale, selling, and/or using products employing the invention of the patent-in-suit, without authority or license from Mettke.

18. On information and belief, Defendants have improperly profited and continue to improperly profit by their infringing activities.

19. Mettke seeks an award of damages adequate to compensate for all of the infringements of Defendant, but in no event less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

20. On information and belief, the actions of Defendant in infringing the patent-in-suit were willful, deliberate, wanton, and reckless, and make this an exceptional case within the meaning of 35 U.S.C. § 285. Accordingly, Mettke requests that the damage awarded by the Court be trebled as permitted by 35 U.S.C. § 284, and that reasonable attorneys fees be awarded under 35 U.S.C. § 285.

21. Because of the infringement of Defendant, Mettke has suffered and will continue to suffer irreparable damage and injury for which he has no adequate remedy at law. This irreparable damage and injury will continue for as long as Defendant continues to manufacture, have manufactured, offer for sale, sell or use, either directly or indirectly products within the United States embodying the invention claimed in the patent-in-suit. Therefore, Mettke seeks an injunction under 35 U.S.C. § 283 to prevent any continuing infringement.

22. Mettke hereby requests a trial by jury under Rule 38 of the Federal Rules of Civil Procedure.

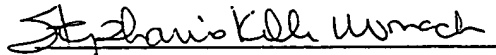
RELIEF REQUESTED

WHEREFORE, Plaintiff requests as follows:

- (a) that this Court adjudge that Mettke is the owner of United States Letters Patent No. 5,602,905, and is entitled to the right of recovery thereunder;
- (b) that this Court adjudge that the patent-in-suit is valid in law and that Defendant has infringed the patent-in-suit;
- (c) that a permanent injunction be issued enjoining Defendant and those in privity with Defendant from further infringement of the patent-in-suit;
- (d) that an accounting be had for the damages arising out of Defendant's infringing activities;
- (e) that Mettke be awarded damages adequate to compensate for Defendant's infringing activities, including all profits arising as a result of such infringement, but in no event less than a reasonable royalty, together with prejudgment and post judgment interest thereon and costs as fixed by the Court, as provided by 35 U.S.C. § 284;
- (f) that the damages so found be trebled by this Court, as provided by 35 U.S.C. § 284;
- (g) that Mettke be awarded his reasonable attorneys fees, costs, and expenses in this action; and
- (h) that this Court grant Mettke such other and further relief as it may deem just and proper.

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY.

Respectfully submitted,



One of the attorneys for the
Plaintiff, Richard P. Mettke

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